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SIMPLIFICATION OF INDICTMENTS

regard himself as a shrewd manipulator within legitimate business lines. The truth is that in the mad rush for wealth in the last few decades the lines between profit from legitimate business and improper gain from undue use of trust control over other people's property and money have sometimes been dimmed, and the interest of society requires that, whenever opportunity offers, those charged with the enforcement of the law should emphasize the distinction between honest business and dishonest breaches of trust. . . .

"There are circumstances which have been emphasized by those who have represented Walsh in the application for pardon that appeal to one's sympathy, if the case is judged with reference to Walsh alone. But it must be judged with reference to the right of society to have the law vindicated and crime punished, no matter how influential the convicted person or how many friends his present pitiable condition may lead to speak in his behalf. The opportunity to commit such crimes is only afforded to men who have enjoyed high position in society and have secured the trust and friendship of many. Every case of this kind, therefore, must present some such consideration as those referred to, and if the Executive, on an appeal for clemency, should yield to them it would defeat the object of the law and present a demoralizing difference between the punishment meted out to the ordinary criminal whose circumstances have naturally led him into crime and one whose position in society should have made for him the strongest restraint against violation of the law."

"It is a happy day for the United States," observes the *Boston Transcript*, "when men of rank and class can be brought to book and the gibe and jeer that the man higher up cannot be punished in our law courts is proved untrue."

The firmness displayed by the President in the face of the powerful influence brought to bear upon him shows that he possesses a high sense of his constitutional duty and a proper understanding of the objects and purposes of executive clemency. The example set by the President in these cases should have a salutary influence, and we doubt not that it will serve to clear up and strengthen some of our conceptions in regard to the obligations of society to protect the innocent against such breaches of confidence.

J. W. G.

SIMPLICITY IN INDICTMENTS.

In connection with the discussion as to the simplification of indictments the experience of Pennsylvania may be of interest. The general form of indictment for murder in use is as follows:

The Grand Inquest of the Commonwealth of Pennsylvania now inquiring in and for the body of the county of, upon their oaths and affirmations respectively do present that, yeoman, late of said county, on the day of, in the year of our Lord, in the County aforesaid and within the jurisdiction of this Court, did then and there feloniously, wilfully and of his malice aforethought kill and murder, contrary to the form of the Act of Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

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This simplified form of the common law indictment resulted from an act passed by the legislature in 1860, which provided that:

"In any indictment for murder or manslaughter, it shall not be necessary to set forth the manner in which the death of the deceased was caused, but it shall be sufficient, in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased."

Other provisions in regard to the simplifying of indictments and formal defects therein were embodied in the same act, the most important of which are as follows:

"If on the trial of any indictment for felony or misdemeanor, there shall appear to be any variance between the statement of such indictment and the evidence offered in proof thereof, in the name of any place mentioned or described in any such indictment, or in the name or description of any person or persons or body politic or corporation therein stated, or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offense charged therein; or the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged, by the commission of such offense; or in the Christian name or surname, or both Christian name and surname, or other description whatsoever of any person or persons whomsoever, therein named or described, or in the ownership of any property named or described therein; it shall and may be lawful for the court before whom the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense upon such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment wherein said variance occurs, and in every other part of the indictment in which it may become necessary to amend; and after such amendment the trial shall proceed in the same manner in all respects, and with the same consequences, as if no variance had occurred. And every verdict and judgment which shall be given after making such amendment, shall be of the same force and effect, in all respects, as if the indictment had originally been in the same form in which it was after such amendment was made.

"Every indictment shall be deemed and adjudged sufficient and good in law, which charges the crime substantially in the language of the Act of the Assembly prohibiting the crime and prescribing the punishment, if any such there be, or if at common law, so plainly that the nature of the offense charged may be easily understood by the jury. Every objection to any indictment for any formal defect, apparent on the face thereof, shall be taken by demurrer or on motion to quash such indictment, before the jury shall be sworn, and not afterward; and every court before whom any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by the clerk or other officer of the court, and thereupon the trial shall proceed as if no such defect appeared."

It will be noted that these provisions are very similar to those of the English statute of 14 & 15 Victoria, ch. 100, passed in 1857, and were

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doubtless modeled after them. Since 1860, therefore, Pennsylvania courts have been practically free from "a class of technical niceties which are a reproach to the rational administration of justice," to quote the language of the framers of the act. These provisions, of course, had to be construed by the courts, but that few questions now arise under them is indicated by the fact that in the fifty-three appeals to the Supreme Court in capital cases from 1905 to 1910, in only one was any question raised as to the indictment. Should the indictment not furnish the defendant sufficient information to prepare his defense, the court will, in a proper case, order a bill of particulars to be furnished him by the district attorney; but this is in the discretion of the court and its action will not be reviewed on appeal. The wisdom and beneficial effect of these provisions has been apparent in criminal trials in Pennsylvania, no less than in England. E. L.

EVIDENCES OF PROGRESS IN LAW REFORM.

Editor John D. Lawson, of the *American Law Review*, a tireless advocate of law reform, has recently found evidence in the decisions of a number of courts that the cry for a more speedy and certain justice is being heard by the judges in various parts of the country. The demand that technicality shall not obscure the real issue is, he says, finding already a response by more than one appellate judge, and in more than one appellate court, and public opinion is beginning to make itself felt and is inducing some of the courts to sweep aside form when it stands in the way of justice.

The first case which he cites as evidence of his proposition is that of *Holt v. the United States* (31 S. C. Rep., reviewed in the January number of this JOURNAL, pp. 779-780), where the accused, who had been convicted of shooting a man in the barracks of a United States fort in the state of Washington, sought to have the conviction set aside by the United States Supreme Court on various grounds of a technical character, such as flaws in the phraseology of the indictment, the erroneous admission of evidence, the refusal of the trial judge to exclude from the jury a man who had read a newspaper account of the crime, but who stated that he had no other opinion than that derived from this source and that he believed he could try the case fairly and impartially; certain remarks made by the prosecuting attorney in his prosecuting address; permission granted to the jury to separate during the trial, and the conduct of the trial judge in requiring the accused to put on a certain blouse, thus compelling him to be a witness against himself. But these and other "meticulous" objections did not impress the Supreme Court